

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GERALD L. RABBITT,

Plaintiff,

CASE NO. 1:09-CV-1001

v.

HON. ROBERT J. JONKER

CORNERSTONE UNIVERSITY, et al.,

Defendants.

ORDER APPROVING REPORT AND RECOMMENDATION

The Court has reviewed the Magistrate Judge's Report and Recommendation (docket # 160) and Plaintiff's Objection to it (docket # 161). Under the Federal Rules of Civil Procedure, where, as here, a party has objected to portions of a Report and Recommendation, "[t]he district judge . . . has a duty to reject the magistrate judge's recommendation unless, on de novo reconsideration, he or she finds it justified." 12 WRIGHT, MILLER, & MARCUS, FEDERAL PRACTICE AND PROCEDURE § 3070.2, at 381 (2d ed. 1997). Specifically, the Rules provide that:

The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

FED. R. CIV. P. 72(b)(3); *see also* 28 U.S.C. § 636(b)(1)(C). De novo review in these circumstances requires at least a review of the evidence before the Magistrate Judge. *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981).

In his Report and Recommendation, Magistrate Judge Brenneman recommends that

Plaintiff's motion for leave to appeal *in forma pauperis* (docket nos. 148 and 149) be denied, and that Plaintiff be required to pay the \$455.00 filing fee to pursue his appeal. Plaintiff objects to the Magistrate Judge's conclusion that payment of the filing fee would not constitute an undue financial hardship. After a de novo review of the record, the Court adopts the Report and Recommendation, and denies Plaintiff's motion to proceed *in forma pauperis*.

The Magistrate Judge correctly noted that leave to proceed *in forma pauperis* should only be granted if it reasonably appears that paying the filing fee would impose an undue financial hardship on Plaintiff. *Prows v. Kastner*, 842 F.2d 138, 140 (5th Cir. 1988). Although Plaintiff reports that his household expenses result in a \$25.00 monthly deficit, the record also reflects that Plaintiff has assets in excess of \$142,000. The Court agrees with the Magistrate Judge's conclusion that it does not appear that filing fee of \$455.00 would be beyond Plaintiff's financial means or impose an undue hardship on him. Therefore, Plaintiff's motion is **DENIED**.

IT IS SO ORDERED.

Dated: September 28, 2011

/s/Robert J. Jonker
ROBERT J. JONKER
UNITED STATES DISTRICT JUDGE